



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Federal Licensing of Office of Refugee Resettlement Facilities Request for Information

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The Unaccompanied Children (UC) Program is responsible for the administration of childcare facilities throughout the country that care for unaccompanied children arriving in the United States prior to those children being placed with viable sponsors in the United States. To inform a strategic and impactful plan for the administration of these facilities HHS is issuing this Request for Information (RFI). The RFI solicits specific input regarding options for a Federal licensure process to ensure continued program operations.

DATES: To be considered, public comments must be received electronically no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Public comments should be submitted online at <http://www.regulations.gov>. All submissions must be submitted to the Docket named ACF–2021–0001 to “Request for Information (RFI) from Non-Federal Stakeholders: Federal Licensing of ORR Facilities.” Comments submitted electronically, including attachments, will be posted to the docket unchanged and available to view by the public. Evidence and information supporting your comment can be submitted as attachments. Please provide your contact information or organization name on the web-based form for possible follow up from HHS. There is a 5,000-

character limit on comments and maximum number (10) of attached files and maximum size (10 MB) of each attached file.

FOR FURTHER INFORMATION CONTACT: Toby Biswas, Senior Supervisory Policy Counsel, Division of Policy and Procedures, Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, Washington, DC, (202) 205–4440 or ucpolicy@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: ORR facilities are currently administered through a nationwide network of grantee providers that care for unaccompanied children on a day-to-day basis. These facilities are subject to Federal ORR policies and regulations regarding their operations as well as applicable State-based licensure regulations regarding the operation of childcare facilities in each jurisdiction.

The Flores Settlement Agreement (FSA) generally requires that ORR promptly place unaccompanied children into a State licensed child-care program. As of July 2021, ORR operates over 200 licensed care provider facilities in 22 states under approximately 50 separate grants executed under Cooperative Agreements between ORR and the grantee care providers. Each State has its own State licensing standards.

The Director of ORR and the Secretary of HHS have broad authority to oversee policies for the care of unaccompanied children, including by identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied children; overseeing the infrastructure and personnel at facilities that ORR places unaccompanied children; and conducting investigations and inspections of the facilities that house unaccompanied children. *See* 6 U.S.C. 279(b)(1)-(2); 8 U.S.C. § 1232. Accordingly, the Director has authority to develop, implement, and oversee the licensing or other approval of facilities that house unaccompanied children pursuant to a set of uniform Federal standards. Historically, ORR has not developed or

implemented a Federal licensing or approval system and instead has funded State-licensed care facilities.

On May 31, 2021, Texas Governor Greg Abbott issued an emergency proclamation directing the Texas Health and Human Service Commission (HHSC) to “discontinue state licensing of any child-care facility in this state that shelters or detains [unaccompanied children] under a contract with the federal government.” The May 31 proclamation directs HHSC to “deny a license application for any new child-care facility that shelters or detains [unaccompanied children] under a contract with the federal government, to renew any existing such licenses for no longer than a 90-day period following the date of this order, and to provide notice and initiate a 90-day period beginning on the date of this order to wind down any existing such licenses.”¹

On July 13, 2021, HHSC issued an emergency rule implementing the May 31 Proclamation, which creates a temporary exemption to Texas’s State licensure requirement for child-care facilities that shelter unaccompanied children in Federal custody. *See* 26 T.A.C. section 745.115. The emergency rule—and the exemption it provides—are only effective for 120 days and can only be renewed for an additional 60 days. The emergency rule directed facilities with an existing license serving unaccompanied children to provide notice to HHCS by July 31, 2021, indicating whether they intended to continue serving unaccompanied children after August 30, 2021, and if so, whether they intended to relinquish their licenses and continue operating as an exempt, unlicensed program, or whether they intended to retain their licenses and continue serving unaccompanied children by separately operating an exempt program to serve their unaccompanied child population. *See* 26 T.A.C. section 745.10301. The same day, HHSC issued

¹ May 31, 2021, Emergency Proclamation, *available at* : https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf.

updated guidance regarding the May 31 proclamation.² It is unclear if the Texas legislature intends to provide a permanent exemption when the emergency rule expires.

ORR is committed to providing the highest level of services to all children in ORR facilities and to treating all unaccompanied children with dignity, respect, and special concern for their particular vulnerability. As such, ORR is exploring the possibility of providing Federal licenses to ORR facilities where State law declines to license or otherwise exempts from licensure programs that contract or have a grant with ORR for the provision of physical care and services for unaccompanied children. HHS is considering assigning the responsibility of licensing or approving ORR facilities to a component outside of ORR, such as in ACF, and having that component be responsible for investigations and inspections of the ORR facilities, as well as monitor compliance.

Any such HHS component would also monitor compliance with all necessary adopted standards independently of any direct ORR oversight. Specifically, this component would be responsible for investigations and inspections of ORR facilities and issuance of licenses under this plan. This HHS component might contract with an outside entity to perform some of the responsibilities discussed herein, while ultimately maintaining oversight over the outside entity.

Additionally, ORR is interested in determining whether accreditation through an independent accreditation agency could likewise accomplish the goal of providing applicable standards without Federal licensing.

The RFI seeks public input on the challenges posed by the current State-based system of licensures that requires facilities to comply with a variety of complex rules that vary by State and – as demonstrated by the Texas proclamation – exposes ORR facilities to licensing discrimination by State regulatory officials based on their affiliation with the Federal

² July 13, 2021, Updated Guidance on the Governor's Disaster Proclamation, *available at*: <https://www.hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/provider-portal/protective-services/ccl/ccl-gov-declaring-disaster.pdf>

Government. The RFI also seeks input on what sort of licensing regime, and which responsible HHS component, would best serve the needs of current service providers, including any interests in standardization of licensing requirements, while also preserving independence and objectivity in oversight from ORR. The RFI also seeks input regarding how best to preserve independence from ORR in monitoring compliance of existing standards in ORR facilities as well as any additional commentary that would be relevant.

Responses may address one or more of the areas below:

1. What challenges do facilities face in complying with the State-based licensing scheme as currently operating around the country?
2. What sort of independent entity do you see as best positioned to provide the services currently provided by State licensing entities?
3. Comments on having one entity responsible for issuing licenses and a second entity responsible for investigations and inspections.
4. When should a provider seek a Federal license as opposed to a State license?
5. Views on the possibility of dual (State and Federal) licensure and/or Federal accreditation of State licensed facilities to ensure compliance with minimum Federal standards?
6. Suggestions on how to improve information sharing between State and Federal partners?
7. What challenges would be posed to existing ORR facilities if ORR were to seek a Federal license on a facility's behalf?
8. What types of standards should be adopted for licensure (the list is non-exhaustive, and commenters should please include recommendations on additional categories)?
 - a. Minimum standards for facilities
 - b. Admission, orientation, reunification, and release processes
 - c. Child rights
 - d. Services, including needs assessment, development of care plans, developmental and educational services, and legal services

- e. Organization and administration
 - f. Reporting and recordkeeping
 - g. Training
 - h. Monitoring and oversight
 - i. Caregiver-to-child staffing ratios
 - j. Medical and dental care, family planning services, and emergency healthcare services
 - k. Mental health and behavior management
 - l. Visitation and contact with family members
 - m. Safeguarding children
 - n. Physical plant
 - o. Rescission and denial of licenses
9. How would an independent licensing entity best provide independence and objectivity from ORR in performing its critical task of monitoring compliance with all existing standards?
10. What proposed rules and processes should be applied for an independent investigatory agency to investigate and inspect federally licensed facilities?
11. What are some possible benefits of Federal licensure?
12. What are some possible challenges of Federal licensure?
13. How would Federal licensure impact operations and other requirements, such as grant/contract or insurance requirements?
14. What agency or entity should investigate and inspect federally licensed facilities?
15. Comments regarding a Federal licensing scheme versus a Federal accreditation plan.
16. How can considerations for an ORR Federal licensing, accreditation, and/or monitoring scheme inform additional or aligned guidance and standards for other full-time child-caring facilities supported by ORR or HHS?

17. What information should ORR provide to the public on ORR-funded or ORR-licensed shelter facilities?
18. What resources should ORR consider if it develops a Federal licensing, accreditation, and/or monitoring program?
19. Would a Federal licensing or accreditation program need to work differently in different care environments, such as residential childcare institutions, group homes, and child behavioral health facilities?
20. Would you recommend any alternatives to a Federal licensing or accreditation scheme?
21. Any additional topics you wish to provide input on.

The information received will inform the planning for executing a new Federal licensing scheme or accreditation program.

Date: September 1, 2021.

Cindy Huang,

Director, Office of Refugee Resettlement.

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